

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

|                        |   |                                  |
|------------------------|---|----------------------------------|
| Israel Romero,         | ) | C/A No. 6:11-cv-564-JMC-KFM      |
| Reina M Chavez-Romero, | ) |                                  |
|                        | ) |                                  |
| Appellants,            | ) |                                  |
|                        | ) |                                  |
| vs.                    | ) | <b>Report and Recommendation</b> |
|                        | ) |                                  |
| Coventry Credit Union, | ) |                                  |
|                        | ) |                                  |
| Appellee.              | ) |                                  |
|                        | ) |                                  |

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This Bankruptcy Appeal is before the Court because of Appellants' failure to comply with the undersigned's Order of March 17, 2011 (ECF No. 10), and because of Appellants' failure to prosecute the case in a timely manner.

Appellants filed their notice of appeal in their Bankruptcy Court case (B.R. No. 10-837-hb) on November 29, 2010. The Bankruptcy Court transferred the notice to this Court and this appeal was opened on March 9, 2011. (ECF No. 1). Following the required initial review for *pro se* submissions, it was determined that Appellants needed to pay the \$255.00 filing fee or to submit individual motions for leave to proceed *in forma pauperis*. The March 17 Order granted Appellants 21 days in which to pay the filing fee or submit the required motions. The Order stated:

If Appellants fail to provide the items specified above to the Clerk of Court within the period prescribed in this Order, the Clerk of Court shall forward the file to the assigned United States Magistrate Judge for a recommendation. See *In Re: Procedures in Civil Actions Filed by Non-Prisoner Pro Se Litigants*, No. 3:07-mc-5015-JFA.

The 21-day period has now passed, but a review of the docket discloses no response from Appellants to the Order. The envelope in which the Order was sent to

Appellants at their last reported address has not been returned, thus it is presumed that they received the Order but decided not to pursue this appeal.

Applying the four-factor test of *Davis v. Williams*, 588 F.2d 69, 70 (4<sup>th</sup> Cir. 1978) to the circumstances of this case, it is clear that the failure of either Appellant to take any action in the Bankruptcy Court for over three months after they filed the Notice of Appeal, their failure to personally submit anything to this Court in the more than two months this case has been pending, and their complete lack of response to the initial Order issued in this case indicates an intent on Appellants' part not to prosecute this case.

Accordingly, it is recommended that this case be dismissed *without prejudice* due to Appellants' failure to comply with this Court's Order and failure to prosecute the case. See Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a plaintiff fails to comply with "any order of the court." ); see also *Ballard v. Carlson*, 882 F.2d 93, 95 (4<sup>th</sup> Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4<sup>th</sup> Cir. 1982)(court may dismiss *sua sponte*).

Appellants' attention is directed to the important notice on the following page.

s/Kevin F. McDonald  
United States Magistrate Judge

April 22, 2011  
Greenville, South Carolina

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Larry W. Propes, Clerk  
United States District Court  
300 E. Washington Street, Rm. 239  
Greenville, South Carolina 29601**

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).